



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 4 **S**

#### PRISONERS ETC.

##### *Release of prisoners*

#### **27 Release on licence etc. under 1989 Act **S****

- (1) The 1989 Act (certain provisions of which, notwithstanding their repeal by the 1993 Act, continue to apply to prisoners sentenced before 1st October 1993 by virtue of section 47(2) of, and paragraph 2(1) of Schedule 6 to, that Act) is amended for the purposes of the existing provisions, within the meaning of that Schedule, as follows.
- (2) In section 22 (which, among other things, enables the Scottish Ministers to release on licence certain prisoners if recommended to do so by the Parole Board and, by virtue of subsection (1A) of that section, requires them to release certain other prisoners if there is such a recommendation)—
  - (a) in subsection (1), for the word “may” there is substituted “shall”;
  - (b) subsection (1A) is repealed; and
  - (c) in subsection (7)—
    - (i) the words “and by virtue of subsection (1A) above such release is then mandatory”; and
    - (ii) the words from “; and in any other case” to the end, are repealed.

#### **28 Release on licence etc. under 1993 Act **S****

- (1) The 1993 Act (which applies to prisoners sentenced on or after 1st October 1993 and to some prisoners sentenced before that date) is amended as follows.
- (2) In section 1(3) (which enables the Scottish Ministers to release on licence certain prisoners if recommended to do so by the Parole Board and, by virtue of section 20(3)(a), requires them to release certain other prisoners if there is such a recommendation), for the word “may” there is substituted—

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- “(a) shall, except in the case mentioned in paragraph (b) below; or
  - (b) may, in the case of a prisoner who is liable to removal from the United Kingdom (within the meaning of section 9 of this Act),”.
- (3) In section 12 (which enables the Scottish Ministers to insert, vary or cancel conditions in licences and, in certain cases, to do so in accordance with the recommendations of the Parole Board), for subsections (3) and (4) there is substituted—
- “(3) The Scottish Ministers may under subsection (1) above include on release and from time to time insert, vary or cancel a condition in a licence granted under this Part of this Act; but—
- (a) in the case of a long-term or life prisoner released by the Scottish Ministers under subsection (1) of section 3 of this Act without consulting the Parole Board, no licence condition shall be inserted, varied or cancelled subsequent to the release except in accordance with the recommendations of the Parole Board; and
  - (b) in the case of any other long-term or life prisoner, no licence condition shall be included on release, or subsequently inserted, varied or cancelled except in accordance with such recommendations.”.
- (4) Section 20(3) (which provides power to modify the effect of section 1(3) in relation to certain classes of case) is repealed.

## 29 Release on licence: life prisoners **S**

- (1) The 1993 Act is amended as follows.
- (2) In section 2 (which provides, among other things, for consideration by the Parole Board of whether a life prisoner should be released on licence)—
- (a) in subsection (5A)(b), after the word “being” there is inserted “, subject to subsections (5AB) to (5AD) below, ”;
  - (b) after that subsection there is inserted—

“(5AB) Where a reference has been made to the Parole Board under any of the provisions mentioned in subsection (5A) above and the prisoner receives another sentence of imprisonment (whether for life or for a term) before a date has been fixed for considering his case, the Board shall, if he would not be eligible for release from the other sentence on the date which would (apart from this subsection) have been fixed for considering his case, fix a date (other than that date) for considering his case.

- (5AC) Where, at any time after such a reference has been made—
- (a) a date has been fixed for considering the prisoner’s case; or
  - (b) following the disposal of the reference, a date has been fixed under subsection (5A)(b) above,

and, before that date, the prisoner receives any other sentence of imprisonment (whether for life or for a term), the Board shall, if he would not be eligible for release from any such other sentence on that date, fix a different date for considering his case (and where he receives any further sentence of imprisonment from which he would not be eligible for release on that different date, the Board shall fix a further different date).

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- (5AD) Any date fixed under subsection (5AB) or (5AC) above shall—
- (a) be—
    - (i) the date on which the prisoner would be eligible to be released, or considered for release, from all such other sentences (subject to any change to the date on which he would be so eligible); or
    - (ii) a date as soon as practicable after that date; and
  - (b) replace any date previously fixed for considering the prisoner’s case.”;
- (c) in—
- (i) subsection (5B); and
  - (ii) subsection (5C),
- after the words “subsection (5A)(b)” there is in each case inserted “ , (5AB) or (5AC) ”;
- (d) for subsection (7) there is substituted—
- “(7) No requirement shall be made under subsection (6) above by a life prisoner who is also serving or liable to serve a sentence of imprisonment for a term, before he has served the appropriate part of the term.
- (7A) The appropriate part of the term is—
- (a) one half, where the term is—
    - (i) less than 4 years; or
    - (ii) 4 years or more and is imposed by a sentence of imprisonment on conviction of an offence; or
  - (b) two thirds, where the term is 4 years or more and is a term of imprisonment or detention mentioned in section 5(1)(a) or (b) of this Act.
- (7B) Section 5(1) of this Act, in so far as relating to the construction of references to sentences of imprisonment, does not apply to subsection (7A)(b) above.”; and
- (e) in subsection (9), after the word “serving” there is inserted “ or is liable to serve ”.
- (3) In section 5(1) (which applies, with modification, the provisions of the 1993 Act concerning persons sentenced to imprisonment, or detention, on conviction of an offence to persons on whom imprisonment, or detention, has been imposed for non-payment of fine or for contempt of court), for the words “section 1(8)” there is substituted “ sections 1(8) and 2(7B) ”.

### 30 **Release on licence: certain consecutive sentences** **S**

In section 1A (application to persons serving more than one sentence) of the 1993 Act—

- (a) the existing words become subsection (1); and
- (b) after that subsection there is added—

“(2) Where a prisoner who is serving any term of imprisonment receives a sentence of imprisonment or other detention for life, for an

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indeterminate period or without limit of time which is to take effect on the day after he would (but for the sentence so received) be entitled to be released from the term, nothing in this Part of this Act shall require—

- (a) the Scottish Ministers to release him in respect of any such term unless and until they are required to release him in respect of the sentence so received; or
- (b) the Scottish Ministers or the Parole Board to consider his release in respect of any such term unless and until the Scottish Ministers are or the Parole Board is required to consider his release, or the Scottish Ministers are required to release him, in respect of the sentence so received.”.

### 31 **Release: prisoners serving extended sentences** S

In section 3A (re-release of prisoners serving extended sentences) of the 1993 Act—

- (a) in subsection (1)—
  - (i) at the beginning there is inserted “ Subject to subsection (1A) below, ”; and
  - (ii) for the words “who has been recalled to prison under section 17(1)” there is substituted “ and in respect of whom a licence has been revoked under section 17(1) to (1B) ”;
- (b) after subsection (1) there is inserted—
 

“(1A) This section does not apply to such a prisoner if he has, in addition to the sentence in relation to which his recall to prison applies, been sentenced to imprisonment for life and has not been released from that sentence.”;
- (c) in subsection (2), in paragraph (a), for the words “disposal of that referral” there is substituted “ Board’s disposal of his case ”;
- (d) after that subsection there is inserted—
 

“(2A) Where—

  - (a) a prisoner’s case has been referred to the Parole Board under this section or section 17(3) of this Act; and
  - (b) the prisoner receives another sentence of imprisonment before the Board has considered his case,

the Board shall not consider his case unless there is a further referral of his case to the Board under this section.

(2B) A case which, by virtue of subsection (2A) above, is not considered by the Parole Board shall not, for the purposes of subsection (2)(a) above, be treated as having been disposed of.”; and
- (e) in subsection (3)—
  - (i) for the word “sentence” in the second place where it appears there is substituted “ term ”; and
  - (ii) for the words “has served one half of” there is substituted “ would be eligible to be released, or considered for release, from ”.

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### **32 Release etc. under 1993 Act of prisoner serving consecutive or concurrent offence and non-offence terms** **S**

- (1) The 1993 Act is amended as follows.
- (2) In section 27 (interpretation of Part I), after subsection (4) there is inserted—
- “(4A) For the purposes of this Part of this Act, a term of imprisonment or detention—
- (a) is wholly concurrent with another such term (or other such terms) if—
    - (i) it is imposed on the same date as that other term (or terms); and
    - (ii) it expires on the same date as that other term (or terms); and
  - (b) is partly concurrent with another such term (or other such terms) if—
    - (i) it is imposed on the same date as, and expires on a different date from, that other term (or terms); or
    - (ii) it is imposed on a different date from, but before the expiry of, that other term (or terms).”.

(3) In Schedule 1 (which makes special provision as respects eligibility for early release from consecutive or wholly or partly concurrent offence and non-offence terms of imprisonment or detention)—

    - (a) for paragraph 2 (consecutive terms) there is substituted—

- “2
- (1) Where his offence term and his non-offence term are consecutive, whichever term follows the other shall be taken as beginning on the day after he is released as respects the other term.
  - (2) For the purposes of sub-paragraph (1) above, where his offence term and his non-offence term are imposed on the same date, his non-offence term shall be taken to follow his offence term.

#### **2A Concurrent terms of imprisonment**

Where his offence term and his non-offence term are wholly or partly concurrent, section 1(1) to (3) of this Act (so far as relevant to the term in question and whether or not modified by section 5(2) of this Act or as read with section 220 of the 1995 Act (reduction of term in certain circumstances)) shall apply separately to each term (that is to say, in particular, he may be released as respects one of the terms even if he is not for the time being eligible for release as respects the other term).”; and

- (b) paragraphs 3 (wholly concurrent terms) and 4 (partly concurrent terms) are repealed.

### **33 Prisoners repatriated to Scotland** **S**

- (1) In the Repatriation of Prisoners Act 1984 (c. 47)—
- (a) in subsection (9) of section 3 (transfer into the United Kingdom), the words “or section 10 of the Prisoners and Criminal Proceedings (Scotland) Act 1993” and “or, as the case may be, Scotland” are repealed; and
  - (b) in the Schedule (operation of certain enactments in relation to the prisoner)—

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(i) for paragraph 2 there is substituted—

“2 **Early release**

(1) In determining, for the purposes of sections 1(1) to (3), 2(2) and (7) and 7(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), in their application to prisoners repatriated to Scotland (eligibility for early release from a sentence), whether the prisoner has at any time served a particular proportion or part of the sentence, the sentence shall, subject to sub-paragraph (2) below, be deemed to begin with the day on which the relevant provisions take effect.

(2) If the warrant specifies a period to be taken into account for the purposes of section 1(3) or 2(2) or (7) of that Act (eligibility of long-term and life prisoners as respects release on licence)—

- (a) the amount of time the prisoner has served; and
- (b) where the sentence is a determinate one, the sentence,

shall, so far only as the question whether he has served any particular proportion or part of the sentence is concerned, be deemed to be increased by that period.

(3) The question whether the prisoner is a short-term or a long-term prisoner for the purposes of any of the sections mentioned in sub-paragraph (1) above shall be determined by reference to the length of the sentence imposed in the country or territory from which he is transferred.

(4) For the purposes of Schedule 6 to that Act, a prisoner's sentence shall be deemed to have been imposed on the day on which the relevant provisions take effect.

(5) In this paragraph, “sentence”, except in sub-paragraph (3) above, means the provision included in the warrant which is equivalent to a sentence.”; and

(ii) paragraph 3 is repealed.

(2) Subsection (1)(b)(i) applies in relation to prisoners repatriated to Scotland on or after the coming into force of this section any of whose sentences in the country or territory from which they are transferred were imposed on or after 1st October 1993.

(3) In paragraph 1 of Schedule 6 (transitional provisions and savings) to the 1993 Act, in the definition of “new provisions”, after the words “1997” there is inserted “ and section 33 of the Criminal Justice (Scotland) Act 2003 (asp 7) ”.

(4) In paragraph 7 of Schedule 2 (repatriation of prisoners to the British Islands) to the Crime (Sentences) Act 1997 (c. 43), in sub-paragraph (1), for the words from “for” to the end there is substituted “ but before the commencement of section 33 of the Criminal Justice (Scotland) Act 2003 (asp 7) ”.

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### **34 Suspension of conditions and revocation of licences under 1989 Act** **S**

- (1) The 1989 Act is amended for the purposes of the existing provisions (within the meaning of Schedule 6 to the 1993 Act) as follows.
- (2) In subsection (6) of section 22 (which requires a person released on licence under that section to comply with such conditions as may be specified in the licence), after the word “shall” there is inserted “, subject to section 22A below, ”.
- (3) After that section there is inserted—

#### **“22A Suspension of licence conditions**

- (1) Where a prisoner, who has been released on licence under section 22 of this Act as respects a sentence of imprisonment—
    - (a) continues, by virtue of any enactment or rule of law, to be detained in prison notwithstanding such release; or
    - (b) is, by virtue of any enactment or rule of law, detained in prison subsequent to the date of such release but while the licence remains in force,the conditions in the licence, other than those mentioned in subsection (3) below, shall by virtue of such detention be suspended.
  - (2) The suspension of the conditions shall have effect for so long as—
    - (a) the prisoner is so detained; and
    - (b) the licence remains in force.
  - (3) The conditions are any conditions, however expressed, requiring the prisoner—
    - (a) to be of good behaviour and to keep the peace; or
    - (b) not to contact a named person or class of persons (or not to do so unless with the approval of a person specified in the licence by virtue of section 22(7) of this Act).
  - (4) The Scottish Ministers may by order amend subsection (3) above by—
    - (a) adding to the conditions mentioned in that subsection such other conditions as they consider appropriate; or
    - (b) cancelling or varying a condition for the time being mentioned in that subsection.”.
- (4) In section 28 (which, among other things, enables the Scottish Ministers to revoke the licence of, and recall to prison, certain prisoners if recommended to do so by the Parole Board and, by virtue of subsection (1A) of that section, requires them to revoke the licence of and recall to prison certain other prisoners if there is such a recommendation)—
    - (a) in subsection (1), for the word “may” there is substituted “ shall ”; and
    - (b) subsection (1A) is repealed.

### **35 Suspension of licence conditions under 1993 Act** **S**

- (1) The 1993 Act is amended as follows.

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- (2) In section 12 (which requires a person released on licence under Part I of that Act to comply with the conditions specified in the licence), in subsection (1), after the word “shall” there is inserted “, subject to section 12A below,”.
- (3) After that section there is inserted—

**“12A Suspension of licence conditions**

- (1) Where a prisoner, who has been released on licence under this Part of this Act as respects a sentence of imprisonment—
- (a) continues, by virtue of any enactment or rule of law, to be detained in prison notwithstanding such release; or
  - (b) is, by virtue of any enactment or rule of law, detained in prison subsequent to the date of such release but while the licence remains in force,
- the conditions in the licence, other than those mentioned in subsection (3) below, shall by virtue of such detention be suspended.
- (2) The suspension of the conditions shall have effect for so long as—
- (a) the prisoner is so detained; and
  - (b) the licence remains in force.
- (3) The conditions are any conditions, however expressed, requiring the prisoner—
- (a) to be of good behaviour and to keep the peace; or
  - (b) not to contact a named person or class of persons (or not to do so unless with the approval of the person specified in the licence by virtue of section 12(2)(a) of this Act).
- (4) The Scottish Ministers may by order amend subsection (3) above by—
- (a) adding to the conditions mentioned in that subsection such other condition as they consider appropriate; or
  - (b) cancelling or varying a condition for the time being mentioned in that subsection.

**12B Certain licences to be replaced by one**

- (1) Subsection (2) below applies where a prisoner—
- (a) has been released on licence under this Part of this Act or under the 1989 Act as respects any sentence of imprisonment (“the original sentence”); and
  - (b) while so released, receives another sentence of imprisonment (whether for life or for a term) (“the subsequent sentence”),
- and the licence as respects the original sentence has not been revoked.
- (2) Where—
- (a) this subsection applies; and
  - (b) the prisoner is to be released on licence under this Part of this Act as respects the subsequent sentence,
- he shall instead be released on a single licence under this Part of this Act as respects both the original sentence and the subsequent sentence.



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- (3) The single licence—
- (a) shall have effect in place of—
    - (i) the licence as respects the original sentence; and
    - (ii) any licence on which the prisoner would, apart from this section, be released as respects the subsequent sentence;
  - (b) shall be subject to such conditions as were in the licence as respects the original sentence immediately before that licence was replaced by the single licence; and
  - (c) shall (unless revoked) remain in force for so long as any licence as respects the original sentence or as respects the subsequent sentence would, apart from this section (and if not revoked), have remained in force.”.

### 36 Revocation of licences under 1993 Act **S**

- (1) The 1993 Act is amended as follows.
- (2) In section 5(2) (fine defaulters and persons in contempt of court), for the words from “both” to “17(1)” there is substituted “ released on licence under section 3 of this Act and, subsequently, the licence is revoked under section 17(1), (1A) or (1B) ”.
- (3) In section 16(7) (which provides that a court order that a long-term or short-term prisoner released on licence be returned to prison has the effect of automatically revoking the licence), paragraph (a), and the word “and” immediately following that paragraph, are repealed.
- (4) In section 17 (which enables the Scottish Ministers to revoke the licence of, and recall to prison, certain prisoners if recommended to do so by the Parole Board, enables them to do so in certain circumstances without such a recommendation, and requires them to do so as respects certain prisoners if there is such a recommendation), for subsections (1) to (3) there is substituted—
- “(1) Where—
- (a) a long-term prisoner has been released on licence under this Part of this Act and is not detained as mentioned in section 12A(1)(a) or (b) of this Act; or
  - (b) a life prisoner has been so released on licence and is not detained as mentioned in section 12A(1)(b) of this Act,
- the Scottish Ministers—
- (i) shall, if recommended to do so by the Parole Board; or
  - (ii) may, if revocation and recall are, in their opinion, expedient in the public interest and it is not practicable to await such a recommendation,
- revoke the licence and recall the prisoner to prison.
- (1A) Where a long-term prisoner or a life prisoner has been released on licence as mentioned in subsection (1) above, but is detained as mentioned in that subsection, the Scottish Ministers—
- (a) shall, if recommended to do so by the Parole Board; or
  - (b) may, if revocation is, in their opinion, expedient in the public interest and it is not practicable to await such a recommendation,

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revoke the licence.

(1B) Where a short-term prisoner has been released on licence under section 3(1) of this Act, the Scottish Ministers may, whether or not he is detained as mentioned in section 12A(1)(b) of this Act—

(a) revoke the licence; and

(b) where he is not so detained, recall him to prison,

if they are satisfied that his health or circumstances have so changed that his release on licence is no longer justified.

(2) The Scottish Ministers shall, on the revocation of a person's licence under subsection (1), (1A) or (1B) above, inform that person of the reasons for the revocation.

(3) The Scottish Ministers shall refer to the Parole Board the case of a person whose licence is revoked under subsection (1), (1A) or (1B) above.”.

### **37 Extended sentences: recall to prison and revocation of licences** **S**

(1) The 1993 Act is amended as follows.

(2) In section 26A (which applies, with adaptations, the other provisions of Part I of the 1993 Act to prisoners who are subject to an extended sentence), for subsection (9) there is substituted—

“(9) In relation to a prisoner subject to an extended sentence, the reference in section 17(5) of this Act to the prisoner being “liable to be detained in pursuance of his sentence” shall be construed as a reference to the prisoner being liable to be detained until the expiry of the extension period.”.

### **38 Special provision in relation to children** **S**

(1) The 1993 Act is amended as follows.

(2) In section 7 (which among other things enables the Scottish Ministers to release on licence certain children if recommended to do so by the Parole Board, and which provides that a court order that a child released on licence be returned to detention has the effect of automatically revoking the licence)—

(a) in subsection (2), for the word “may” there is substituted “ shall ”;

(b) subsection (4A) is repealed;

(c) for subsection (5), there is substituted—

“(5) Without prejudice to section 6(1)(b)(ii) of this Act—

(a) sections 3, 11(1), 12, 12A, 12B, 17 and 20(2) of this Act apply to children detained under section 208 of the 1995 Act as they apply to long-term prisoners; and

(b) in those sections of this Act, references to prisoners, or to prison, imprisonment or sentences of imprisonment shall be construed, and sections 1A and 27 shall apply, accordingly.”; and

(d) subsection (6) is repealed.

**Changes to legislation:**

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