



# Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

## PART 2

### CONFINEMENT AND RELEASE OF PRISONERS

PROSPECTIVE

#### CHAPTER 3

##### COMMUNITY AND LIFE LICENCES

###### *The standard conditions*

#### **28 Release on licence: the standard conditions**

- (1) Where a prisoner is released on licence by virtue of this Part, the prisoner is released subject to the standard conditions.
- (2) The standard conditions are—
  - (a) that the prisoner must be of good behaviour, and
  - (b) that, subject to subsection (3), the prisoner is prohibited from leaving the United Kingdom.
- (3) Paragraph (b) of subsection (2) does not apply if—
  - (a) the prisoner falls within subsection (4), or
  - (b) the Scottish Ministers permit, or a person designated by them for the purposes of this section permits, the prisoner to leave the United Kingdom.
- (4) The prisoner falls within this subsection if—
  - (a) the prisoner is liable to deportation under section 3(5) of the Immigration Act 1971 (c. 77) and has been notified of a decision to make a deportation order,
  - (b) the prisoner is liable to deportation under section 3(6) of that Act,

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- (c) the prisoner has been notified of a decision to refuse the prisoner leave to enter the United Kingdom,
- (d) the prisoner is an illegal entrant within the meaning of section 33(1) of that Act,
- (e) the prisoner is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c. 33).

**Modifications etc. (not altering text)**

- C1 Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), **ss. 2(2)**, 5(2); S.S.I. 2012/249, art. 2

*The supervision conditions*

**29 Release on licence of certain prisoners: the supervision conditions**

- (1) This section applies where a prisoner falling within subsection (2) is released on licence by virtue of this Part.
- (2) A prisoner falls within this subsection if—
  - (a) the prisoner is
    - (i) a life prisoner,
    - (ii) a custody and community prisoner serving a custody and community sentence of 6 months or more,
    - (iii) any other custody and community prisoner in respect of whom—
      - (A) by virtue of section 6(4)(b), the court specifies a custody part which is three-quarters of the prisoner's sentence, or
      - (B) the Parole Board determines under section 12(2), that section 10(2) applies,
    - (iv) a person released on licence by virtue of section 27(1),
    - (v) a person subject to an extended sentence (as defined in section 210A of the 1995 Act),
    - (vi) a person subject to the notification requirements in Part 2 of the Sexual Offences Act 2003 (c. 42), or
    - (vii) a child (as defined in section 307(1) of the 1995 Act) subject to a sentence of detention under section 208 of that Act, and
  - (b) the prisoner does not fall within section 28(4).
- (3) The prisoner is released subject to the supervision conditions.
- (4) The supervision conditions are—
  - (a) that the prisoner is to be under the supervision of a relevant officer of the local authority specified in the licence,
  - (b) that the prisoner is to maintain contact with the relevant officer as the officer directs,
  - (c) that the prisoner is to inform the relevant officer of—
    - (i) any change of address,
    - (ii) any change in employment, and

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- (d) that the prisoner is to comply with any other requirements imposed in relation to the supervision by the relevant officer.
- (5) In subsection (4) “relevant officer”, in relation to a local authority, means an officer of the authority employed by it in the discharge of its functions under section 27(1) of the Social Work (Scotland) Act 1968 (c. 49).

### *Community licences*

#### **30 Release on community licence on Parole Board's direction**

- (1) This section applies where by virtue of section 13(2)(b), 14(3)(b), 16(3), 18(3)(b) or 42(4)(b) the Parole Board specifies conditions which are to be included in a prisoner's community licence.
- (2) The Scottish Ministers must include in the prisoner's community licence—
  - (a) those conditions,
  - (b) the standard conditions, and
  - (c) if section 29(1) applies, the supervision conditions.
- (3) On the direction of the Parole Board, the Scottish Ministers may—
  - (a) vary the conditions mentioned in subsection (2),
  - (b) cancel conditions (other than the standard conditions and the supervision conditions),
  - (c) include in the licence further conditions.

#### **31 Community licences in which Scottish Ministers may specify conditions**

- (1) This section applies where by virtue of section 11(2) or 27(1) the Scottish Ministers release a prisoner on community licence.
- (2) The Scottish Ministers—
  - (a) must include in the prisoner's community licence—
    - (i) the standard conditions, and
    - (ii) if section 29(1) applies, the supervision conditions,
  - (b) may include in the licence such other conditions as they consider appropriate.
- (3) The Scottish Ministers may—
  - (a) vary the conditions mentioned in subsection (2),
  - (b) cancel conditions (other than the standard conditions and the supervision conditions),
  - (c) include in the licence such further conditions as they consider appropriate.
- (4) Before exercising any of the powers conferred by subsection (2) or (3), the Scottish Ministers must, in pursuance of arrangements established under section 9(1), co-operate with the appropriate local authority.
- (5) In subsection (4) “appropriate local authority” has the same meaning as in section 9.

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### *Life licences*

#### **32 Release on life licence: conditions**

- (1) This section applies where by virtue of section 23(2)(b) or 42(4)(b) the Parole Board specifies conditions which are to be included in a prisoner's life licence.
- (2) The Scottish Ministers must include in the prisoner's life licence—
  - (a) those conditions,
  - (b) the standard conditions, and
  - (c) if section 29(1) applies, the supervision conditions.
- (3) On the direction of the Parole Board, the Scottish Ministers may—
  - (a) vary the conditions mentioned in subsection (2),
  - (b) cancel conditions,
  - (c) include in the licence further conditions.

#### **33 Compassionate release on life licence: conditions**

- (1) This section applies where by virtue of section 27(1) the Scottish Ministers release a prisoner on life licence.
- (2) The Scottish Ministers must include in the licence—
  - (a) the standard conditions,
  - (b) the supervision conditions, and
  - (c) such other conditions as they consider appropriate.
- (3) The Scottish Ministers may—
  - (a) vary or cancel the conditions mentioned in subsection (2),
  - (b) include further conditions in the licence.

### *Duration of licence*

#### **34 Period during which licence in force**

- (1) Where a custody-only prisoner is released on licence by virtue of section 27(1), the licence remains in force until the expiry of the prisoner's sentence.
- (2) Where a custody and community prisoner is released on community licence by virtue of section 11(2), 13(2)(a), 19(1), 27(1) or, as the case may be 42(4)(a), the licence remains in force until the expiry of the prisoner's sentence.
- (3) Where a life prisoner is released on life licence by virtue of section 23(2)(a), 27(1) or, as the case may be 42(4)(a), the licence remains in force until the prisoner dies.

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### *Prisoner to comply with licence conditions*

#### **35 Prisoner to comply with licence conditions**

Where a prisoner is released on licence by virtue of section 11(2), 13(2)(a), 19(1), 23(2)(a), 27(1) or 42(4)(a), the prisoner must, while the licence is in force, comply with the conditions included in the licence.

### *Suspension*

#### **36 Suspension of licence conditions while detained**

- (1) Subsection (2) applies where—
  - (a) the Scottish Ministers release a prisoner on licence by virtue of section 11(2), 13(2)(a), 19(1), 23(2)(a), 27(1) or 42(4)(a), and
  - (b) while the licence is in force the prisoner continues to be, or is, detained in prison by virtue of this Part, any other enactment or any rule of law.
- (2) Any condition in the licence other than a condition mentioned in subsection (3) is suspended for the relevant period.
- (3) Those conditions are any conditions (however expressed) requiring the prisoner—
  - (a) to be of good behaviour and to keep the peace,
  - (b) to refrain from contacting a person, or class of person, specified in the licence (or to refrain from doing so without the approval of a person specified in the licence).
- (4) The relevant period is—
  - (a) the period during which the prisoner remains detained in prison, and
  - (b) the licence remains in force.
- (5) The Scottish Ministers may by order amend subsection (3) by amending conditions or adding or removing conditions.

### *Revocation*

#### **37 Revocation of licence**

- (1) If—
  - (a) a prisoner is released on licence by virtue of section 11(2), 13(2)(a), 19(1), 23(2)(a), 27(1) or 42(4)(a),
  - (b) the prisoner is not detained as mentioned in section 36(1)(b), and
  - (c) subsections (2) and (3) apply,the Scottish Ministers must revoke the licence and recall the prisoner to prison.
- (2) This subsection applies if—
  - (a) the prisoner breaches a licence condition, or
  - (b) the Scottish Ministers consider that the prisoner is likely to breach a licence condition.

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(3) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence and recall the prisoner to prison.

(4) If—

- (a) a prisoner is released on licence by virtue of section 11(2), 13(2)(a), 19(1), 23(2)(a), 27(1) or 42(4)(a),
- (b) the prisoner is detained as mentioned in section 36(1)(b), and
- (c) subsections (2) and (5) apply,

the Scottish Ministers must revoke the licence.

(5) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence.

### **38 Compassionate release: additional ground for revocation of licence**

(1) This section applies if—

- (a) a prisoner is released on licence by virtue of section 27(1), and
- (b) the Scottish Ministers are satisfied that there are no longer compassionate grounds justifying the prisoner's release on licence by virtue of that section.

(2) The Scottish Ministers must revoke the licence.

(3) If the prisoner is not detained as mentioned in section 36(1)(b), the Scottish Ministers must recall the prisoner to prison.

### **39 Prisoners unlawfully at large**

Where—

- (a) a prisoner's licence is revoked by virtue of section 37(1) or 38(2), and
- (b) the prisoner is at large,

the prisoner is unlawfully at large.

### **40 Compassionate release: effect of revocation in certain circumstances**

(1) Subsection (2) applies where—

- (a) a prisoner is released on licence by virtue of section 27(1),
- (b) the licence is revoked by virtue of section 37(1) or (4) or 38(2), and
- (c) the revocation occurs before the expiry of the relevant period.

(2) This Part applies to the prisoner as if the prisoner had not been released on licence by virtue of section 27(1).

(3) The relevant period is—

- (a) in the case of a custody-only prisoner, the prisoner's sentence,
- (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence,
- (c) in the case of a life prisoner, the punishment part of the prisoner's sentence.

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#### **41 Referral to Parole Board following revocation of licence**

- (1) Subsection (2) applies where the Scottish Ministers revoke a licence by virtue of section 37(1) or (4) or 38(2).
- (2) The Scottish Ministers must—
  - (a) inform the prisoner of the reasons for the revocation, and
  - (b) subject to section 40, refer the prisoner's case to the Parole Board.

#### **42 Consideration by Parole Board**

- (1) This section applies where a prisoner's case is referred to the Parole Board by virtue of section 41(2)(b), 43(9) or 44(5).
- (2) The Parole Board must determine whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if it is in the public interest that the prisoner be confined.
- (4) If the Parole Board determines that subsection (3) does not apply it must—
  - (a) direct the Scottish Ministers to release the prisoner on licence, and
  - (b) specify conditions to be included in the licence.
- (5) Where a direction is given under subsection (4)(a) the Scottish Ministers must release the prisoner on community licence or, as the case may be, life licence.

#### **43 Determination that section 42(3) applicable: consequences for custody and community prisoners**

- (1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a custody and community prisoner.
- (2) The Parole Board must give the prisoner reasons in writing for its determination.
- (3) If on the day of the determination less than 4 months of the prisoner's sentence remain to be served, the prisoner must be confined until the expiry of the prisoner's sentence.
- (4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner's sentence remain to be served, the Parole Board may, subject to section 26, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner's case.
- (5) That period is the period—
  - (a) beginning with the day falling 4 months after the day of the determination, and
  - (b) ending on the expiry of the prisoner's sentence.
- (6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner's sentence.
- (7) If on the day of the determination at least 2 years of the prisoner's sentence remain to be served, the Parole Board must, subject to section 26, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner's case.
- (8) That period is the period—
  - (a) beginning with the day falling 4 months after the day of the determination, and

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(b) ending immediately before the second anniversary of the day of the determination.

(9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.

#### **44 Determination that section 42(3) applicable: consequences for life prisoners**

(1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a life prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) The Parole Board must, subject to section 26, fix a date falling within the period mentioned in subsection (4) on which it will next consider the prisoner's case.

(4) That period is the period—

- (a) beginning with the day falling 4 months after the day of the determination, and
- (b) ending immediately before the second anniversary of the day of the determination.

(5) The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (3).

#### **45 Prisoner's right to request early reconsideration by Parole Board**

(1) Subsection (2) applies where the Parole Board fixes a date under—

- (a) section 43(4),
- (b) section 43(7), or
- (c) section 44(3),

for considering a prisoner's case.

(2) On the prisoner's request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner's case by fixing that earlier date under section 43(4), 43(7) or, as the case may be, 44(3).

(3) Subsection (4) applies where the Parole Board does not fix a date under section 43(4).

(4) On the prisoner's request, the Board may, if it considers it appropriate to do so, fix a date under section 43(4) when it will next consider the prisoner's case.

#### *Single licence*

#### **46 Multiple licences to be replaced by single licence**

(1) This section applies where a prisoner—

- (a) is released on licence by virtue of section 11(2), 13(2)(a), 19(1), 23(2)(a), 27(1) or 42(4)(a) as respects any sentence of imprisonment (the “original sentence”), and
- (b) while the licence remains in force, another sentence of imprisonment is imposed on the prisoner (the “subsequent sentence”).

(2) Where—



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- (a) the prisoner is to be released on licence by virtue of this Part as respects the subsequent sentence, and
  - (b) the licence as respects the original sentence remains in force,
- the prisoner must be released on a single licence as respects both the original sentence and the subsequent sentence.
- (3) The single licence replaces the licence as respects both the original sentence and the subsequent sentence.
- (4) The single licence must include the conditions which were in the licence as respects the original sentence immediately before that licence was replaced.
- (5) The single licence remains in force (unless revoked) for the longer of the periods for which the licences as respects—
- (a) the original sentence, or
  - (b) the subsequent sentence,
- would (apart from this section and if not revoked) have remained in force.
- (6) Where—
- (a) the prisoner is to be released unconditionally under this Part as respects the subsequent sentence, and
  - (b) the licence as respects the original sentence remains in force,
- the licence as respects the original sentence continues in force (unless revoked).

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**Changes and effects yet to be applied to :**

- Pt. 2 Ch. 3 title words substituted by [2010 asp 13 s. 18\(4\)](#)

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

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

- s. 29A inserted by [2010 asp 13 s. 18\(6\)](#)
- s. 42A inserted by [2010 asp 13 Sch. 3 para. 6](#)
- s. 45(1)(za)(zb) inserted by [2010 asp 13 Sch. 3 para. 7\(2\)](#)
- s. 46A inserted by [2010 asp 13 s. 18\(7\)](#)
- s. 47(3A) inserted by [2010 asp 13 s. 18\(8\)\(c\)](#)
- s. 47(8)(a)(b) substituted for words by [2010 asp 13 s. 18\(8\)\(e\)](#)
- s. 51(1A) inserted by [2010 asp 13 Sch. 3 para. 9\(3\)](#)
- Sch. 2 para. 1(4) added by [2010 asp 13 Sch. 3 para. 13\(3\)\(c\)](#)
- Sch. 2 para. 7(1A) inserted by [2010 asp 13 Sch. 3 para. 13\(8\)](#)
- Sch. 3 para. 2A inserted by [2010 asp 13 Sch. 3 para. 14\(3\)](#)
- Sch. 3 para. 3(3) inserted by [2010 asp 13 Sch. 3 para. 14\(4\)\(b\)](#)
- Sch. 3 para. 3A inserted by [2010 asp 13 Sch. 3 para. 14\(5\)](#)
- Sch. 3 para. 5(4A) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(d\)](#)
- Sch. 3 para. 5(6) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(e\)](#)