



# Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

## PART 2

### CONFINEMENT AND RELEASE OF PRISONERS

#### CHAPTER 1

##### INTRODUCTORY

### 3 Application of Part 2

This Part does not apply in relation to a sentence (other than a life sentence) imposed on a person for an offence committed before the coming into force of the Part.

### 4 Basic definitions

(1) In this Part—

“the 1995 Act” means the Criminal Procedure (Scotland) Act [1995 \(c. 46\)](#),

“curfew condition” has the meaning given by section 48,

“custody and community prisoner” means a person serving a custody and community sentence,

“custody and community sentence” means a sentence of imprisonment for an offence for a term of 15 days or more,

“custody-only prisoner” means a person serving a custody-only sentence,

“custody-only sentence” means a sentence of imprisonment for a term of less than 15 days; and includes a sentence of detention imposed under section 206(2) of the 1995 Act (detention for up to 4 days in summary case),

“custody part” has the meaning given by section 6(3),

“life prisoner” means a person on whom a life sentence is imposed,

“life sentence” means—

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- (a) a sentence of life imprisonment for an offence for which that sentence is not the sentence fixed by law (a “discretionary life sentence”),
  - (b) a sentence of life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law (a “mandatory life sentence”), or
  - (c) a sentence of imprisonment for an indeterminate period constituted by an order for lifelong restriction under section 210F of the 1995 Act,
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
- “Parole Board” means the Parole Board for Scotland,
- “punishment part” has the meaning given by section 20(3),
- “standard conditions” means the conditions mentioned in section 28(2), and
- “supervision conditions” means the conditions mentioned in section 29(4).
- (2) The Scottish Ministers may by order amend the definitions of “custody and community sentence” and “custody-only sentence” in subsection (1) by substituting a different term for the term for the time being mentioned in those definitions.
  - (3) References in this Part to release on community licence are references to the release on licence of a custody and community prisoner.
  - (4) References in this Part to release on life licence are references to the release on licence of a life prisoner.

## CHAPTER 2

### CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

#### *Custody-only prisoners*

#### **5 Release on completion of sentence**

As soon as a custody-only prisoner has served the term of imprisonment specified in the prisoner’s sentence the Scottish Ministers must release the prisoner unconditionally.

#### *Custody and community prisoners*

#### **6 Setting of custody part**

- (1) This section applies where the court imposes on a person a custody and community sentence.
- (2) After imposing the sentence, the court must make an order specifying the custody part of the sentence.
- (3) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).
- (4) An order specifying a custody part must specify that the custody part is—

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- (a) one-half of the sentence, or
  - (b) if subsection (5) applies, such greater proportion of the sentence as the court specifies.
- (5) This subsection applies if, taking into account in particular the matters mentioned in subsection (6), the court considers that it would be appropriate to specify a greater proportion of the sentence as the custody part.
- (6) Those matters are—
- (a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment or complaint as that offence,
  - (b) where the offence was committed when the person was serving a sentence of imprisonment for another offence, that fact, and
  - (c) any previous conviction of the person.
- (7) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.
- (8) An order specifying a custody part must specify the custody part by reference to a fixed period of time.
- (9) Where (but for this subsection) a custody part would fall to be specified as a period including a fraction of a day, the custody part must be specified in whole days (any such fraction being rounded up to a whole day).
- (10) Where, by virtue of subsection (4)(b), the court specifies a custody part of more than one-half of the sentence, the court must state in open court the reason for doing so.
- (11) An order specifying a custody part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

## **7 Power to amend section 6(4)**

The Scottish Ministers may by order amend section 6(4)(a) by substituting for the proportion for the time being specified there a different proportion specified in the order.

## **8 Provision of information by court**

- (1) This section applies where—
- (a) a court imposes a custody and community sentence on a person, and
  - (b) the court is not required by—
    - (i) section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7), or
    - (ii) section 210H(2) of the 1995 Act,to prepare a report.
- (2) As soon as is reasonably practicable after imposing the sentence, the court must provide the Scottish Ministers with such information about—
- (a) the person, and
  - (b) the circumstances of the case,
- as the court considers appropriate.

- (3) Information provided by virtue of subsection (2) is to be provided in such form as the court considers appropriate.

## **9 Joint arrangements between Scottish Ministers and local authorities**

- (1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risks posed in the local authority's area by custody and community prisoners.
- (2) For the purposes of assisting the Scottish Ministers in making a determination under section 10(1), the Scottish Ministers and the appropriate local authority must during the custody part of a custody and community prisoner's sentence assess in accordance with arrangements established under subsection (1) whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if the prisoner would, were the prisoner released on community licence on the expiry of the custody part, be likely to cause serious harm to members of the public.
- (4) In this section, "appropriate local authority", in relation to a custody and community prisoner, means the local authority for the area in which the prisoner—
- (a) resided immediately before the imposition of the custody and community sentence, or
  - (b) intends to reside on release on community licence.
- (5) If, by virtue of subsection (4), two or more local authorities are the appropriate local authority in relation to a custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (2) and section 31(4) may be carried out by only one of them.

## **10 Review by Scottish Ministers**

- (1) Before the expiry of the custody part of a custody and community prisoner's sentence the Scottish Ministers must determine whether subsection (2) applies in respect of the prisoner.
- (2) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

## **11 Consequences of review**

- (1) This section applies where the Scottish Ministers make a determination under subsection (1) of section 10 in respect of a prisoner.
- (2) If the Scottish Ministers determine that subsection (2) of that section does not apply in respect of the prisoner, they must release the prisoner on community licence on the expiry of the custody part of the prisoner's sentence.
- (3) If the Scottish Ministers determine that subsection (2) of that section applies in respect of the prisoner, they must, before the expiry of the custody part of the prisoner's sentence, refer the prisoner's case to the Parole Board.

## **12 Review by Parole Board**

- (1) Subsection (2) applies where a custody and community prisoner's case is referred to the Parole Board under section 11(3).
- (2) Before the expiry of the custody part of the prisoner's sentence, the Parole Board must determine whether section 10(2) applies in respect of the prisoner.

## **13 Release on community licence following review by Parole Board**

- (1) Subsection (2) applies where the Parole Board determines under section 12(2) or 17(3) that section 10(2) does not apply in respect of a prisoner.
- (2) The Parole Board must—
  - (a) direct the Scottish Ministers to release the prisoner on community licence, and
  - (b) specify conditions to be included in the licence.
- (3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on community licence.
- (4) In the case of a determination under section 12(2) the direction must be implemented on the expiry of the custody part of the prisoner's sentence.

## **14 Determination that section 10(2) applicable: consequences**

- (1) This section applies where the Parole Board determines under section 12(2) or 17(3) that section 10(2) applies in respect of a 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 before the three-quarter point—
  - (a) the prisoner must be confined until the three-quarter point, and
  - (b) the Parole Board must specify conditions to be included in the prisoner's community licence.
- (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 before the three-quarter point, the Parole Board may 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 with the three-quarter point.
- (6) If no date is fixed under subsection (4)—
  - (a) the prisoner must be confined until the three-quarter point, and
  - (b) the Parole Board must fix a date falling within the period mentioned in subsection (5) on which it must specify conditions to be included in the prisoner's community licence.
- (7) If on the day of the determination more than 2 years of the prisoner's sentence remain to be served before the three-quarter point, the Parole Board must fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner's case.

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- (8) 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.
- (9) In this section, “three-quarter point”, in relation to a prisoner’s custody and community sentence, means the day on which the prisoner will have served three-quarters of the prisoner’s sentence.
- (10) This section is subject to section 26.

### **15 Prisoner’s right to request early reconsideration by Parole Board**

- (1) Subsection (2) applies where the Parole Board has fixed a date under section 14(4) or (7) 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 14(4) or, as the case may be, (7).
- (3) Subsection (4) applies where the Parole Board does not fix a date under section 14(4).
- (4) On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a date under section 14(4) when it will next consider the prisoner’s case.
- (5) This section is subject to section 26.

### **16 Referral to Parole Board for the purposes of specifying conditions**

- (1) This section applies where the Parole Board fixes a date under section 14(6)(b).
- (2) The Scottish Ministers must refer the prisoner’s case to the Parole Board before that date.
- (3) On that date, the Parole Board must specify conditions to be included in the prisoner’s community licence.

### **17 Further referral to Parole Board**

- (1) This section applies where the Parole Board fixes a date under section 14(4) or (7) for considering a prisoner’s case.
- (2) The Scottish Ministers must refer the prisoner’s case to the Parole Board before that date.
- (3) The Parole Board must determine whether section 10(2) applies in respect of the prisoner.

### **18 Cases where custody part specified as three-quarters of prisoner’s sentence**

- (1) This section applies where, by virtue of section 6(4)(b), the court specifies a custody part which is three-quarters of a prisoner’s custody and community sentence.
- (2) Section 10(1) does not apply.

- (3) Before the expiry of the custody part—
  - (a) the Scottish Ministers must refer the prisoner's case to the Parole Board, and
  - (b) the Parole Board must specify conditions to be included in the prisoner's community licence.

## **19 Release after three-quarters of sentence served**

- (1) As soon as a custody and community prisoner has served three-quarters of the prisoner's custody and community sentence, the Scottish Ministers must release the prisoner on community licence.
- (2) Subsection (1) does not apply in relation to a prisoner whose licence has been revoked by virtue of section 37(1) or (4).

### *Life prisoners*

## **20 Setting of punishment part**

- (1) This section applies where the court imposes on a person a life sentence.
- (2) After imposing the sentence, the court must make an order specifying the punishment part of the sentence.
- (3) The punishment part is that part of the person's life sentence which, taking into account—
  - (a) in the case of a mandatory life sentence, the matters mentioned in subsection (4),
  - (b) in the case of a discretionary life sentence or an order for lifelong restriction under section 210F of the 1995 Act, the matters mentioned in subsection (5),the court considers appropriate to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).
- (4) Those matters are—
  - (a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment as that offence,
  - (b) any previous conviction of the person, and
  - (c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.
- (5) Those matters are—
  - (a) any period of imprisonment which the court considers would have been appropriate for the offence had the court not imposed a sentence, or made an order, such as is mentioned in subsection (3)(b) for the offence, and
  - (b) the part of that period of imprisonment which, by virtue of section 6, the court would have specified as the custody part.
- (6) An order specifying a punishment part must specify the punishment part in years and months.
- (7) It does not matter that a punishment part so specified may exceed the remainder of the person's natural life.

- (8) An order specifying a punishment part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

## **21 Referral to Parole Board**

Before the expiry of the punishment part of a prisoner's life sentence, the Scottish Ministers must refer the prisoner's case to the Parole Board.

## **22 Review by Parole Board**

- (1) Subsection (2) applies where a life prisoner's case is referred to the Parole Board under section 21.
- (2) Before the expiry of the punishment part of the prisoner's life sentence, the Parole Board must determine whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

## **23 Release on life licence following review by Parole Board**

- (1) Subsection (2) applies where the Parole Board determines under section 22(2) or 25(3) that section 22(3) does not apply in respect of a life prisoner.
- (2) The Parole Board must—
  - (a) direct the Scottish Ministers to release the prisoner on life licence, and
  - (b) specify conditions to be included in the prisoner's licence.
- (3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on life licence.
- (4) In the case of a determination under section 22(2) the direction must be implemented on the expiry of the punishment part of the prisoner's sentence.

## **24 Determination that section 22(3) applicable: consequences**

- (1) This section applies where the Parole Board determines under section 22(2) or 25(3) that section 22(3) applies in respect of a life prisoner.
- (2) The Parole Board must—
  - (a) give the prisoner reasons in writing for its determination, and
  - (b) fix the date on which it will next consider the prisoner's case.
- (3) Subject to section 26, the date fixed under subsection (2)(b) must fall within 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.
- (4) Subsection (5) applies where the Parole Board has fixed a date under subsection (2)(b).



- (5) On the prisoner's request, the Board may, if it considers it appropriate to do so, replace that date by fixing under subsection (2)(b) an earlier date when it will next consider the prisoner's case.

## **25 Further referral to Parole Board**

- (1) This section applies where the Parole Board fixes a date under section 24(2)(b) for considering a prisoner's case.
- (2) The Scottish Ministers must refer the prisoner's case to the Parole Board before that date.
- (3) The Parole Board must determine whether section 22(3) applies in respect of the prisoner.

### *Referral to Parole Board: postponement*

## **26 Referral to Parole Board: postponement**

- (1) Subsection (2) applies where—
- (a) a prisoner's case is referred to the Parole Board under this Part (the "referred case"),
  - (b) after the referral another sentence of imprisonment is imposed on the prisoner (the "new sentence"),
  - (c) when that sentence is imposed, the Board has not fixed a date for considering the prisoner's case, and
  - (d) the prisoner would not be eligible for release in relation to the new sentence on the date which would (apart from this section) have been fixed for considering the referred case.
- (2) The Parole Board must—
- (a) fix in accordance with subsection (5) a different date for considering the referred case, and
  - (b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.
- (3) Subsection (4) applies where—
- (a) the Parole Board fixes a date for considering the referred case,
  - (b) before that date, a new sentence is imposed on the prisoner, and
  - (c) the prisoner would not be eligible for release in relation to the new sentence on that date.
- (4) The Parole Board must—
- (a) fix in accordance with subsection (5) a different date for considering the referred case, and
  - (b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.
- (5) A date is fixed in accordance with this subsection if—

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- (a) it is a date which would have been fixed in relation to the new sentence if that were the only sentence imposed on the prisoner, and
- (b) it replaces any date previously fixed for considering the referred case.

*Compassionate release on licence*

**27 Compassionate release on licence**

- (1) Where the Scottish Ministers are satisfied that there are compassionate grounds justifying the release on licence of a prisoner, the Scottish Ministers may release the prisoner on licence.
- (2) Before releasing a custody and community prisoner or a life prisoner under subsection (1) the Scottish Ministers must consult the Parole Board.
- (3) The Scottish Ministers need not consult the Parole Board if it is impracticable to do so.

**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,
  - (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).

*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
  - (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.

#### *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.

#### *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.
- (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.

**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
  - (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—
  - (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).

## CHAPTER 4

### CURFEW LICENCES

#### 47 Curfew licences

- (1) Subsection (2) applies in relation to a custody and community prisoner who—
  - (a) is serving a sentence of imprisonment for a term of 3 months or more, and
  - (b) is of a description specified by the Scottish Ministers by order.
- (2) The Scottish Ministers may release the prisoner on licence (a “curfew licence”) before the expiry of the custody part of the prisoner’s sentence.
- (3) A curfew licence must include a curfew condition.
- (4) The Scottish Ministers may release a prisoner on curfew licence only—
  - (a) after the later of—
    - (i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner’s sentence, or
    - (ii) the day falling 135 days before the expiry of the custody part of the sentence, and
  - (b) before the day falling 14 days before the expiry of the custody part.
- (5) In determining whether to release a prisoner on curfew licence, the Scottish Ministers must have regard to the need to—
  - (a) protect the public at large,
  - (b) prevent re-offending by the prisoner, and
  - (c) secure the successful re-integration of the prisoner into the community.
- (6) The Scottish Ministers may include in a curfew licence such other conditions as they consider appropriate.
- (7) Where a prisoner is released on curfew licence, the prisoner must, while the licence is in force, comply with the conditions included in the licence.
- (8) A curfew licence remains in force until the expiry of the custody part of the prisoner’s sentence.
- (9) An order under subsection (1)(b) may include provision—
  - (a) applying provisions of this Part to curfew licences subject to modifications specified in the order,
  - (b) amending the periods of time mentioned in subsection (4).

#### 48 Curfew conditions

- (1) A curfew condition is a condition which requires the person to whom it relates to remain at a place specified in the condition for periods so specified.
- (2) A curfew condition may—
  - (a) require the person not to be in a place, or class of place, so specified at a time or during a period so specified,
  - (b) specify different places, or different periods, for different days.

- (3) A curfew condition may not specify periods which amount to less than nine hours in any one day (excluding the first and last days of the period for which the condition is in force).

#### **49 Monitoring of curfew conditions**

- (1) A person's compliance with a curfew condition is to be monitored remotely.
- (2) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a curfew condition as that section applies in relation to the making of, and compliance with, a restriction of liberty order.
- (3) The Scottish Ministers must designate in a curfew licence a person who is to be responsible for the remote monitoring.
- (4) The Scottish Ministers may replace the person designated under subsection (3) (or last designated under this subsection) with another person designated with the responsibility for the remote monitoring.
- (5) As soon as is practicable after designating a person under subsection (3) or (4), the Scottish Ministers must send the person—
- (a) a copy of the curfew condition, and
  - (b) any other information they consider necessary for the fulfilment of the person's responsibility.
- (6) If a designation is made under subsection (4), the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced.

### **CHAPTER 5**

#### **NO RELEASE ON WEEKENDS OR PUBLIC HOLIDAYS**

#### **50 No release on weekends or public holidays**

- (1) Where (but for this subsection) a prisoner would fall to be released by virtue of this Part on a day which is a Saturday, Sunday or public holiday, the prisoner must instead be released on the last preceding day which is not a Saturday, Sunday or public holiday.
- (2) In subsection (1), "public holiday" means any day on which, in the opinion of the Scottish Ministers, public offices or other facilities likely to be of use to the prisoner in the area in which the prisoner is likely to be following release will be closed.

### **CHAPTER 6**

#### **EXTENDED AND MULTIPLE SENTENCES**

#### **51 Prisoners serving extended sentences: application of Part 2**

- (1) Where a prisoner is serving, or liable to serve, an extended sentence, this Part applies subject to the modifications in subsections (2) to (5).

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*Status: This is the original version (as it was originally enacted).*

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- (2) In section 6(4), (5), (7) and (10), references to a custody and community sentence are to be read as references to the confinement term of an extended sentence.
- (3) In section 14(9), the second reference to the prisoner’s custody and community sentence is to be read as a reference to the confinement term of the prisoner’s extended sentence.
- (4) In sections 18(1) and 19(1), references to the prisoner’s custody and community sentence are to be read as references to the confinement term of the prisoner’s extended sentence.
- (5) In section 47(4)(a)(i), the reference to the prisoner’s sentence is to be read as a reference to the confinement term of the prisoner’s extended sentence.
- (6) In this section, the expressions “extended sentence” and “the confinement term” are to be construed in accordance with section 210A(2) of the 1995 Act.

## **52 Prisoners serving more than one sentence: application of Part 2**

Schedule 2 (which makes provision for the application of this Part to prisoners serving, or liable to serve, more than one sentence of imprisonment) has effect.

## **53 Sentences framed to run consecutively**

Schedule 3 (which makes provision for and in connection with the imposition of sentences of imprisonment framed to take effect on the expiry of another sentence) has effect.

## **CHAPTER 7**

### APPLICATION OF PART 2 TO CERTAIN PERSONS

## **54 Persons detained under mental health provisions**

- (1) Where a transfer for treatment direction under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ([asp 13](#)) has been made in respect of a person serving a sentence of imprisonment, this Part applies to that person as if—
  - (a) the person continues to serve the sentence while detained in hospital, and
  - (b) the person had not been removed to hospital.
- (2) Where a person is conveyed to and detained in a hospital pursuant to a hospital direction under section 59A of the 1995 Act, this Part applies to that person as if, while so detained, the person were serving a sentence of imprisonment imposed at the time the direction was made.

## **55 Application to young offenders and children**

- (1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.
- (2) Those persons are—

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*Status: This is the original version (as it was originally enacted).*

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- (a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of less than 15 days,
  - (b) a person sentenced to be detained under section 208 of that Act for such a period.
- (3) This Part applies in relation to the persons mentioned in subsection (4) as it applies in relation to custody and community prisoners.
- (4) Those persons are—
- (a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of 15 days or more,
  - (b) a person sentenced to be detained under section 208 of that Act for such a period.
- (5) This Part applies in relation to the persons mentioned in subsection (6) as it applies in relation to life prisoners.
- (6) Those persons are—
- (a) a person sentenced under section 205(2) or (3) of the 1995 Act to be detained without limit of time or for life,
  - (b) a person on whom detention without limit of time or for life is imposed under section 207(2) of that Act,
  - (c) a person sentenced to be detained without limit of time under section 208 of that Act.
- (7) In this Part as applied by subsections (1), (3) and (5), references to imprisonment are to be read as references to detention; and cognate expressions are to be construed accordingly.

## **56 Fine defaulters and persons in contempt of court**

- (1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.
- (2) Those persons are—
- (a) a person serving by virtue of section 219(1) of the 1995 Act a period of imprisonment or, as the case may be, a period of detention in a young offenders institution,
  - (b) a person serving a period of imprisonment or, as the case may be, a period of detention in a young offenders institution for contempt of court.
- (3) Subsection (1) does not apply in relation to—
- (a) a person on whom the court imposes before the coming into force of this Part—
    - (i) a period of imprisonment in default of payment of a fine under paragraph (a) of section 219(1) of the 1995 Act, or
    - (ii) imprisonment for failure to pay a fine, or any part or instalment of a fine, under paragraph (b) of that section, or
  - (b) a person found in contempt of court, where the conduct which is treated as contempt of court occurs (or first occurs) before the coming into force of this Part.

## CHAPTER 8

### CROSS-BORDER TRANSFER OF PRISONERS

#### 57 Cross-border transfer of prisoners

- (1) The Scottish Ministers may by order make provision for or in connection with—
  - (a) the transfer of a person serving a sentence of imprisonment in Scotland from Scotland to a place outwith Scotland,
  - (b) the transfer to, and confinement in, Scotland of a person serving a sentence of imprisonment imposed outwith Scotland.
- (2) An order under subsection (1) may—
  - (a) include provision modifying the application of Part 2 in relation to persons specified in the order,
  - (b) modify any other enactment.