



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART III

#### PRISONERS

#### CHAPTER I

#### EARLY RELEASE

#### *Early release*

### **33 Application of provisions with respect to early release.**

- (1) Subject to subsection (2) below, this Chapter applies in relation to sentences imposed in respect of offences committed after this Chapter comes into force.
- (2) This Chapter does not apply in relation to sentences of an indeterminate length.
- (3) Schedule 2 to this Act, which makes transitional provision as to the relationship between sentences passed in respect of offences committed before and after the coming into force of this Chapter, shall have effect.
- (4) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this Chapter to have been committed on the last of those days.
- (5) In this Chapter—  
“prescribed” means prescribed in rules made under section 39 of the 1989 Act (rules); and

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“prisoner” includes a person sentenced to detention in a young offenders institution under section 207 of the 1995 Act, and cognate expressions shall be construed accordingly.

- (6) Subject to subsection (7) below, the amendments made by this Act to the <sup>M1</sup>Repatriation of Prisoners Act 1984, section 74(6) of the 1984 Act, the 1989 Act and the 1993 Act, and the amendments made to the 1995 Act by paragraph 21(3) of Schedule 1 to this Act shall have effect only in relation to sentences in relation to which this Chapter applies; and any amendment expressed to relate to any of those Acts before or, as the case may be, after the amendments made by this Act come into force, shall have effect accordingly.
- (7) Subsection (6) above does not apply—
- to amendments made to the Repatriation of Prisoners Act 1984 by paragraph 10(2)(b) and (3) of Schedule 1 to this Act;
  - to amendments to the 1989 Act made by sections 42, 43 and 44 of, paragraph 13(2) and (4) of Schedule 1 to, and the repeal of the words from “including” to the end of section 3(1) of that Act made by Schedule 3 to, this Act; and
  - to amendments to the 1993 Act made by section 16 of, and paragraph 14(2)(b), (3)(a) to (d), (8), (10)(b), (11)(a) and (18) of Schedule 1 to, this Act.
- (8) Without prejudice to the provisions of Schedule 2 to this Act (which makes specific provision in relation to aggregation of sentences in the cases mentioned in it), for the purposes of any reference, however expressed, in this Chapter to the term of imprisonment or other detention to which a person has been sentenced or which, having been sentenced, he has served (in whole or in part), consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

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

- C1** Ss. 33(5), 34, 37, 39 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(2)(a)(6)(7)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)
- Ss. 33(5), 37 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(5)(a)(6)(7)**, **11(5)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)
- Ss. 33(5), 34, 37, 39 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(2)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)
- Ss. 33(5), 37 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)
- Ss. 33(5), 34, 37, 39 applied (with modifications) (22.8.1997) by S.I. 1997/1776, art. 2, **Sch. 1 paras. 5-7**

#### Marginal Citations

- M1** 1984 c. 47.

### 34 Early release.

- (1) This section applies where a prisoner is serving a sentence of imprisonment for a term of more than two months.
- (2) For each initial assessment period, the prescribed person may award the prisoner such number of early release days, not exceeding twelve, as he may determine having regard

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to the extent to which the prisoner's behaviour during that period has attained the prescribed minimum standard.

- (3) For each subsequent assessment period, the prescribed person may award the prisoner—
  - (a) such number of early release days, not exceeding six, as he may determine having regard to the extent to which the prisoner's behaviour during that period has attained the prescribed minimum standard; and
  - (b) such number of early release days, not exceeding six, as he may determine having regard to the extent to which the prisoner's behaviour during the period has exceeded that standard.
- (4) Where any early release days are awarded to a prisoner, any period which he must serve before becoming entitled to be released shall be reduced by the aggregate of those days.
- (5) No award of early release days under this section shall entitle a prisoner to be released earlier than the day after the day on which the award is made.
- (6) The Secretary of State may by order provide that subsections (2) and (3) above shall have effect subject to such amendments as may be specified in the order; but no amendment so specified shall reduce—
  - (a) the number of days specified in subsection (2) or (3)(a) above; or
  - (b) the total number of days specified in subsection (3) above.
- (7) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section, in relation to a prisoner—

“assessment period” means—

  - (a) the period of two months starting with the day on which his sentence begins; and
  - (b) each successive period of two months ending before his release; and

“initial assessment period” means an assessment period starting less than twelve months after the day on which his sentence begins and “subsequent assessment period” shall be construed accordingly.

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

- C2** Ss. 33(5), 34, 37, 39 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(2)(a)(6)(7)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)  
Ss. 33(5), 34, 37, 39 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(2)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)  
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**35 Prisoners held on remand.**

- (1) This section applies to a prisoner who has been held in custody on remand prior to conviction or sentence and in respect of whom the court passing sentence has, under

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section 210(1)(b) of the 1995 Act (consideration of time spent in custody), fixed a date for the beginning of his sentence prior to the date upon which sentence is passed.

- (2) Following the conviction and sentence of a prisoner mentioned in subsection (1) above, the prescribed person may, in accordance with section 34 of this Act, and having regard to the extent to which prison staff have not made adverse reports in respect of his conduct during the period which he has spent on remand, retrospectively award him early release days in respect of that part of that period which has been included in his sentence.
- (3) Where—
- (a) a prisoner has, prior to conviction or sentence, been held in hospital by virtue of an order made under section 52 (power of court to commit to hospital an accused suffering from mental disorder), 53 (interim hospital orders) or 200 (remand for inquiry into physical or mental condition) of the 1995 Act; and
  - (b) the court passing sentence has, under section 210(1)(b) of that Act, fixed a date for the beginning of his sentence prior to the date upon which sentence was passed,
- he shall be awarded the maximum number of early release days in respect of his period in that hospital which he could have been awarded under this section if he had spent that period in custody on remand.
- (4) No award of early release days under this section shall entitle a prisoner to be released earlier than the day after the day on which the award is made.
- (5) Subject to subsection (6) below, this section and section 34 of this Act apply to persons sentenced to be detained under section 44 (detention of children in summary proceedings) or detained for determinate periods under section 208 (detention of children convicted on indictment) of the 1995 Act as they apply to prisoners.
- (6) Any early release days which may competently be awarded to a prisoner under this section or section 34 of this Act shall automatically be awarded to a person to whom either of those sections applies by virtue of subsection (5) above, but only for so long as that person is detained in a place other than a young offenders institution or a prison.
- (7) Where a person such as is mentioned in subsection (6) above is transferred to a young offenders institution or a prison he shall, without prejudice to any rules as to forfeiture made under section 39(14) of the 1989 Act (rules), be entitled to the early release days awarded to him prior to that transfer.

### **36 Amendments to 1989 Act.**

- (1) Section 39 of the 1989 Act (rules for the management of prisons) shall be amended in accordance with this section.
- (2) Subsection (7) shall cease to have effect.
- (3) After subsection (12), there shall be added the following subsections—
  - “(13) Rules made under this section may make provision in relation to the assessment mentioned in sections 34 and 35 of the Crime and Punishment (Scotland) Act 1997 and may, without prejudice to the generality of the foregoing, include provision—
    - (a) as to the person who is responsible for making any assessment required to be made in relation to any offender to whom either of those

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- sections applies, whether directly or by virtue of section 41 of that Act (application of early release provisions to mentally disordered offenders);
- (b) as to the intervals at which assessments are to be made;
  - (c) in relation to the considerations to which a person prescribed under paragraph (a) above is to have regard in applying the criteria set out in section 34;
  - (d) as to the manner in which any assessment is to be carried out;
  - (e) for notification of any determination to the prisoner concerned;
  - (f) enabling a prisoner—
    - (i) to make such appeals against any such determination as may be prescribed to such person or persons as may be prescribed; and
    - (ii) following such appeals, to make an appeal to the Secretary of State, who may appoint a person—
      - (A) to consider any such appeal in such manner as that person thinks fit; and
      - (B) to recommend to the Secretary of State how it should be disposed of;
  - (g) as to the application of those sections in respect of prisoners who are transferred between prisons.
- (14) Subject to subsection (15) below, rules made under this section may provide for the forfeiture of early release days awarded to a prisoner, whether on remand or following sentence, where he is guilty, under such rules, of a breach of discipline.
- (15) Rules made under this section may not provide for the forfeiture of any early release days awarded to a mentally disordered offender, within the meaning of section 41 of the Crime and Punishment (Scotland) Act 1997, in respect of anything done by him when he is actually in a hospital in consequence of—
- (a) a transfer direction under section 71 of the <sup>M2</sup>Mental Health (Scotland) Act 1984 (removal to hospital of persons serving sentences of imprisonment and other persons); or
  - (b) a hospital direction under section 59A of the <sup>M3</sup>Criminal Procedure (Scotland) Act 1995 (hospital directions).
- (16) Where a prisoner has not been awarded any early release days, or where the number of days he has been awarded is less than the number of days to be forfeited, the forfeiture referred to in subsection (14) above shall apply to any such days which may subsequently be awarded to that prisoner, but no such forfeiture shall result in a prisoner's being held in prison for a period longer than the total sentence imposed on him by the sentencing court.”.

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**Marginal Citations**

**M2** 1984 c.36.

**M3** 1995 c.46.

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### 37 Suspension of period of early release.

- (1) This section applies to a prisoner, other than a prisoner mentioned in subsection (8) below, sentenced to a term of imprisonment (in this section referred to as “the original sentence”) by a court in Scotland and released by virtue of section 34 of this Act if—
- (a) following that release and before the expiry of—
    - (i) any supervised release order made in respect of him; or
    - (ii) a period representing one sixth of the term of imprisonment to which he was originally sentenced,
 whichever is the later, he commits another offence punishable by imprisonment; and
  - (b) whether before or after that date, he pleads guilty to or is found guilty of that offence (in this section referred to as “the new offence”) in a court in the United Kingdom.
- (2) Where the court mentioned in subsection (1)(b) above is in Scotland then, instead of or in addition to making any other order in respect of the plea or finding—
- (a) in a case other than that mentioned in paragraph (b) below, and subject to subsection (3) below, it may order the prisoner to be returned to prison for the whole or any part of the period which—
    - (i) begins with the date of the order for his return; and
    - (ii) is equal in length to the period between the date of his release and the date on which he would (but for that release) have served his sentence in full;
  - (b) in a case where that court is inferior—
    - (i) to the court which imposed the original sentence; or
    - (ii) where that sentence was imposed by more than one court, to any of those courts,
 it shall refer the case to the superior court in question; and a court to which a case is so referred may make such order with respect to the prisoner as is mentioned in paragraph (a) above.
- (3) There shall be deducted from the period mentioned in subsection (2)(a) above any period which the prisoner has already spent in prison by reason of—
- (a) having been returned to prison on the order of a court for breach of a supervised release order made at the time of his original conviction; or
  - (b) having been returned to prison by virtue of a sentence passed in respect of an earlier offence committed by him during the period after his release and prior to the date mentioned in subsection (1)(a) above.
- (4) Where the court mentioned in subsection (1)(b) above is in England and Wales or Northern Ireland it may, instead of or in addition to making any other order in respect of the plea or finding, refer the case to the court which imposed the original sentence and shall, if it does so, send to that court such particulars of the case as may be relevant.
- (5) The court to which a case is referred under subsection (4) above may make such an order as is referred to in subsection (2)(a) above in respect of the prisoner.
- (6) The period for which a prisoner to whom this section applies is ordered under subsection (2) or (5) above to be returned to prison—
- (a) shall be taken to be a sentence of imprisonment for the purposes of this Act and of any appeal; and

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- (b) shall, as the court making the order may direct, either be served before and be followed by, or be served concurrently with, any sentence of imprisonment imposed for the new offence (being in either case disregarded in determining the appropriate length of that sentence).
- (7) In exercising its powers under section 118(4) or 189(1) of the 1995 Act (disposal of appeals), the court hearing an appeal against an order under subsection (2) or (5) above may, if it thinks fit, substitute for the period specified in the order a period not exceeding the period between the date on which the person was released and the date on which he would (but for his release) have served his sentence in full.
- (8) This section does not apply to a person upon whom detention has been imposed under section 44 (detention of children convicted in summary proceedings) or 208 (detention of children convicted on indictment) of the 1995 Act and, accordingly where any such person has been awarded early release days, he is not thereafter liable to be returned to prison under this section.

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

- C3** Ss. 33(5), 34, 37, 39 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(2)(a)(6)(7)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)
- Ss. 33(5), 37 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 10(5)(a)(6)(7), 11(5)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)
- Ss. 33(5), 34, 37, 39 extended (1.10.1997) by 1997 c. 43, s. 41, **Sch. 1 Pt. II para. 11(2)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (with art. 5)
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### **38 Commission of offence within certain period of release from prison to be aggravation.**

- (1) Where a person who has been sentenced to imprisonment for a term of twelve months or more commits a further offence within a period—
- starting on the date on which he is released from prison; and
  - ending after a period equal to one sixth of the term for which he was sentenced,
- the court which sentences him for the further offence shall, in determining the appropriate sentence or disposal for that offence, have regard to the fact that the further offence was committed during that period.
- (2) The court shall not have regard to the fact that the further offence was committed during the period mentioned in subsection (1) above unless written notice that that fact is to be brought to the attention of the court has been served on the person concerned with the complaint or indictment.
- (3) The fact that the further offence was committed within the period mentioned in subsection (1) above shall, unless challenged—
- in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of the 1995 Act (preliminary diet: notice) or under that paragraph as applied by section 71(2) of that Act (first diet); or

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- (b) in summary proceedings, by preliminary objection before his plea is recorded, be held as admitted.
- (4) Where the maximum penalty in respect of the further offence is specified by or by virtue of any enactment, that maximum penalty shall, for the purposes of the court's determination, by virtue of subsection (1) above, of the appropriate sentence or disposal in respect of that offence, be increased—
- (a) where it is a fine, by the amount for the time being equivalent to level 3 on the standard scale; and
- (b) where it is a period of imprisonment—
- (i) as respects a conviction in the High Court or the sheriff court, by six months; and
- (ii) as respects a conviction in the district court, by 60 days, notwithstanding that the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) Where the sentence or disposal in respect of the further offence is, by virtue of subsection (1) above, different from that which the court would have imposed but for that subsection, the court shall state the extent of and the reasons for that difference.
- (6) This section applies to a child who—
- (a) has been sentenced to a determinate period of detention of twelve months or more under section 208 of the 1995 Act (detention of children following conviction on indictment); and
- (b) is convicted by a criminal court of a further offence,
- as it applies to prisoners.



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