

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

Integrated Management Of Offenders

Section 15 – Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

97. This section amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) to provide that short-term sex offenders (those sentenced to 6 months or more but less than 4 years) shall, on release at the half-way point of sentence, be subject to licence conditions – including electronic monitoring if considered appropriate - and supervision for the remainder of their sentence. The provisions in the 1993 Act dealing with licence conditions, supervision, revocation of licence and recall to custody will apply to these offenders. Scottish Ministers will set the licence conditions. Local Authorities will be responsible for supervising these offenders in the same way as is provided currently for all prisoners who are sentenced to imprisonment for 4 years or more, prisoners receiving extended sentences and life sentence prisoners released on life licence. Failure to comply with licence conditions can result in recall to custody by Scottish Ministers in cases of urgency or on the recommendation of the Parole Board for Scotland. The Board will determine suitability for re-release on licence. The oral hearings arrangements will apply to these offenders. The new arrangements will apply to those relevant offenders who will be released on or after the date when the arrangements come into force early next year.
98. This section also amends Part 1 of the 1993 Act to:
- provide a new power to release prisoners on licence (Home Detention Curfew), and prescribe the limits on this power, including the period during which a prisoner is eligible for release on Home Detention Curfew licence and the categories of prisoner that are excluded from consideration;
 - set out the conditions which must or may be included in the licence, including a curfew condition;
 - provide for the revocation of the licence and recall to custody where the prisoner fails to comply with the conditions of the Home Detention Curfew licence, and for an appeal to the Parole Board; and
 - provide for the application or otherwise of various sections of the 1993 Act to the new type of licence.
99. Subsection (2) amends section 1(1) of the 1993 Act so that it no longer applies to those offenders covered by new section 1AA of the 1993 Act (as inserted by subsection (3) of section 15). In practice this will mean that this group of prisoners will no longer be released unconditionally.

100. Subsection (3) inserts new section 1AA into the 1993 Act. The effect of this new section is to end unconditional release of short term sex offenders serving sentences of between 6 months and 4 years; to make these offenders subject to licence conditions and supervision for the duration of their sentence; to apply the appropriate existing provisions in the 1993 Act dealing with revocation of licence and recall to custody; and to modify the single terming arrangements in the 1993 Act to ensure that where single terming applies, this group of prisoners will still be subject to an appropriate period on licence following release.
- Subsection (1) provides that on reaching the half way point of their sentence Scottish Ministers are to release relevant prisoners on licence.
 - Subsection (2) defines the prisoners to whom the provisions contained in section 1AA apply. These are short term prisoners sentenced to terms of imprisonment of 6 months or more whose conviction means that they are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
 - Subject to subsection (4), subsection (3) provides that subsections (1) and (2) (requiring short term sex offenders to be released on licence and to be subject to supervision) are applied in respect of a relevant offence that has been committed at any time.
 - Subsection (4) disapplies the provisions of new section 1AA to any prisoner who has been released under the provisions in the 1993 Act in relation to a relevant sentence before the coming into force of section 15(3) of the Act.
 - Subsection (5) applies section 17 of the 1993 Act (revocation of licence) to the prisoners to whom section 1AA will apply as it applies to long term prisoners. In practice this means that these short term prisoners when released on licence will be subject to revocation of this licence and recall to custody for breach of licence conditions.
 - Subject to the provisions dealing with single terming in subsections (7) and (8), subsection (6) provides that when a relevant offender is released on licence, and unless that licence is revoked, it will remain in place for the remainder of the sentence.
 - Subsection (7) deals with situations in which the provisions of section 27(5) of the 1993 Act apply. They state that two or more sentences are to be treated, in certain cases, as a single term. Subsection (7) provides that, in such cases, the licence will remain in force until the “relevant period”, as defined in subsection (8), has expired.
101. Subsections (4) to (14) introduce a new discretionary power to release prisoners on what is commonly known as Home Detention Curfew. This will allow the Scottish Prison Service, on behalf of the Scottish Ministers, to release prisoners on licence a short time before they would be eligible for automatic release or, in the case of long-term prisoners, (i.e. those serving a sentence of 4 or more years), for release on licence on the direction of the Parole Board. The length of the Home Detention Curfew period varies according to the sentence length, but cannot be less than 14 days nor more than 135 days. The prisoner must be serving a sentence of at least 3 months, and must spend at least 4 weeks in custody. Certain classes of prisoner are excluded entirely. Release on Home Detention Curfew will be subject to a curfew condition and other standard conditions, and further conditions may also be added on a case-by-case basis. The curfew condition will require the offender to remain at a specified place for at least 9 hours each day, and compliance with this is to be monitored remotely using electronic tagging technology. Decisions on whether to release a prisoner on Home Detention Curfew, and on the conditions to be imposed in the licence, are to have regard to considerations of:
- protecting the public at large;
 - preventing reoffending by the prisoner; and

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- securing the successful reintegration of the prisoner into the community.
102. Failure to comply with any of the conditions, including the curfew condition, may result in the revocation of the licence and the recall of the prisoner to custody. The Act provides a right for the prisoner to appeal to the Parole Board (by submitting representations to the Scottish Ministers), which may direct the Scottish Ministers to cancel the revocation.
103. The provisions are inserted into the Prisoners and Criminal Proceedings (Scotland) Act 1993, which contains most existing provisions on the release of prisoners on licence. A number of minor amendments are made to the 1993 Act to ensure that its provisions apply appropriately to release on Home Detention Curfew. A number of related amendments are contained in section 21 (further amendments and repeal)
104. Subsection (5) inserts a new section 3AA into the 1993 Act, subsection (1) of which provides a new discretionary power for the Scottish Ministers to release prisoners on licence. This power will apply to two groups of prisoners:
- short-term prisoners serving a sentence of at least 3 months and under 4 years. Such prisoners are eligible to be released automatically and unconditionally once they have served one half of their sentence (section 1(1) of the 1993 Act); and
 - long-term prisoners. Such prisoners are eligible to be released on licence once they have served two-thirds of their sentence, and the Parole Board may direct their release on licence at any point after they have served one-half of their sentences. The new power will apply for long-term prisoners only where the Parole Board has made a recommendation that the prisoner is to be released at half-sentence. Other long-term prisoners will be eligible for consideration for parole, and section 40 of the Criminal Justice (Scotland) Act 2003 allows the Parole Board to include a remote monitoring condition in the licence to ensure compliance with other licence conditions.
105. The new section 3AA does not specify how the discretion is to be used. It is intended that the decision on whether to release a particular prisoner on Home Detention Curfew would be taken by the Prison Governor on behalf of the Scottish Ministers and would be informed by an assessment by prison and local authority criminal justice social work staff. Section 3AA(4) provides that the power is to be exercised having regard to considerations of:
- protecting the public at large;
 - preventing reoffending by the prisoner; and
 - securing the successful reintegration of the prisoner into the community.
106. Subsections 3AA(2) and (3) limit the period during which the new power can be exercised. It can only be exercised once the prisoner has served one quarter of his sentence, or four weeks of his sentence (whichever is longer) and within 135 days of the point when he would have served half of the sentence. This 135 day period is expressed in subsection (3) as 121 days because the power cannot be used within 14 days before the prisoner would have been released. This is necessary to prevent the very short licence periods that could otherwise arise where a sentence is backdated following a period on remand, or where the prisoner has been returned to custody and again becomes eligible for Home Detention Curfew. The net effect of these provisions is that the maximum length of the period on Home Detention Curfew for short-term prisoners is as set out in the table below:

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| <i>Sentence Length</i> | <i>Period to be served</i> | <i>Length of Home Detention Curfew</i> |
|---|---|--|
| 3 months or more but less than 4 months | 4 weeks | Between 15 and 30 days (depending on the length of sentence) |
| 4 months but less than 18 months | One quarter of sentence | Up to one quarter of sentence |
| More than 18 months | Half sentence less 135 days (approx 4.5 months) | Up to 135 days (approx 4.5 months) |

107. Section 3AA(5) provides for a number of exclusions from the new power. These cover situations where the prisoner may be considered as a high risk, where special post-release arrangements are already in place or where the prisoner has failed to comply with a previous licence. The specific exclusions listed are for:

- Prisoners subject to extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995. Extended sentences may be imposed by the courts for serious violent or sexual offences, where they consider that the period for which the offender would otherwise be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender
- Prisoners subject to a supervised release order under section 209 of the 1995 Act. Such orders are imposed where the court considers that it is necessary to do so to protect the public from serious harm from the offender on his release
- Prisoners subject to a hospital direction imposed under section 59A of the 1995 Act, or a transfer for treatment direction under the Mental Health (Care and Treatment) (Scotland) Act 2003. Hospital directions can be made where the offender is suffering from mental disorder or it is necessary for the health or safety of that person or for the protection of other persons that he should receive such treatment and the criteria in the 1995 Act are met.
- Prisoners subject to the notification requirements of Part 2 of the Sexual Offences Act 2003. This includes prisoners who have committed one of a wide range of sexual offences, and those subject to Sexual Offences Protection Orders and Risk of Sexual Harm Orders. This exclusion applies irrespective of the current offence for which the prisoner is in custody – for example a person in custody for a non-sexual offence but who is on the register because of previous offences would be excluded.
- Prisoners liable to removal from the United Kingdom. For example, under section 3(6) of the Immigration Act 1971, a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by virtue of the 1971 Act. Such persons would normally be deported immediately on completion of the custodial sentence.
- Prisoners who have previously been released on licence but who have been recalled to prison or have received a further sentence of imprisonment. An exception is made for those recalled from Home Detention Curfew licence because they can no longer be monitored at the place specified in the licence.
- Prisoners who have been released during the currency of their sentence but who have been returned to custody under section 16(2) or (4) of the 1993 Act. That section allows courts, when dealing with a subsequent offence punishable by imprisonment, to reinvoke any unexpired portion of the original sentence.

108. Section 3AA(6) provides an order-making power to adjust the parameters of the release power by altering the minimum sentence length, the minimum period that must be served in custody, and the period during which the power can be exercised. It also allows the list of exceptions to be added to or amended. The power is subject to the affirmative resolution procedure. Section 27(2) of the 1993 Act already provides a power which would allow the minimum proportion of the sentence specified in section 3AA(2)(a) to be adjusted.
109. As the power to release prisoners on Home Detention Curfew licence is being inserted into the Prisoners and Criminal Proceedings (Scotland) Act 1993, it is necessary to ensure that the other provisions of that Act apply appropriately to this new form of licence. In general, the 1993 Act will apply to Home Detention Curfew licence as it applies to other forms of licence such as parole, but subsections (2), (4), (9) and (10) of section 15 disapply sections 1A, 5, 12B and 17 of the 1993 Act. Those sections deal with the combination of licences where a person is serving more than one sentence, imprisonment of fine defaulters and revocation of licences.
110. Subsection (7) amends section 9(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which defines persons liable to removal from the United Kingdom. The amendments update the section to take account of powers contained in the Immigration and Asylum Act 1999 and to correct a reference in the existing section 9(3) (d). As noted above, persons who are liable to removal from the United Kingdom are not to be eligible for Home Detention Curfew.
111. Subsection (8) disapplies section 11 of the 1993 Act in relation to release on Home Detention Curfew and provides instead that a Home Detention Curfew licence remains in force until the prisoner would otherwise fall to be released under section 1, i.e. once he has served one half of his sentence. This provision ensures that the Home Detention Curfew licence does not survive beyond the half-way point of the sentence as this would conflict with the parole licence in the case of long term prisoners, and would mean that a short term prisoner was subject to restrictions at a time when they would normally be released unconditionally.
112. Subsections (9) and (10) deal with the conditions which are to be included in a Home Detention Curfew licence. They do this by modifying the existing section 12 (conditions in licence) and adding new sections 12AA and 12AB into the 1993 Act.
113. Section 12AA provides for the conditions to be included in a Home Detention Curfew licence. The licence must include a curfew condition (as set out in section 12AB) and a set of “standard conditions”. The standard conditions are to be prescribed by the Scottish Ministers by order. Subsection (5) provides that different standard conditions can be prescribed for different classes of prisoner. For short-term prisoners, it is proposed that the standard conditions should initially:
- be of good behaviour and keep the peace; and
 - not commit any offence and not take any action which would jeopardise the objectives of your release on licence (i.e. protect the public, prevent reoffending and secure successful reintegration into the community).
114. For long-term prisoners, the standard conditions would correspond to the usual conditions imposed as part of parole licences. These are to:
- report forthwith to officer in charge of the office at [name of office];
 - be under the supervision of such officer to be nominated for this purpose from time to time by the Chief Social Work Officer of [named local authority];
 - comply with such requirements as that officer may specify for the purposes of supervision;
 - keep in touch with supervising officer in accordance with that officer’s instructions;

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- inform supervising officer if changes place of residence, gains or loses employment;
 - be of good behaviour and keep the peace; and
 - not travel outside Great Britain without prior permission of the supervising officer.
115. These standard conditions will be prescribed by the Scottish Ministers by order; subject to negative resolution procedure (section 45 of the 1993 Act is amended to provide for this).
116. Section 12 of the 1993 Act allows the Scottish Ministers to specify conditions to be included in a licence, and will apply to Home Detention Curfew licences. Subsection (7) modifies its effect, so that a condition requiring the offender to be subject to local authority supervision is optional rather than mandatory, and disapplies a requirement to follow the recommendations of the Parole Board in setting or changing conditions. In practice, any additional conditions will be determined as part of the assessment process. Section 12 will therefore allow Scottish Ministers to specify additional conditions on a case-by-case basis and to vary these conditions. In doing so, and in specifying the standard conditions, the Scottish Ministers will be required to have regard to the following considerations, as they are in determining whether to release a prisoner on Home Detention Curfew:
- protection of the public;
 - prevention of reoffending; and
 - securing the successful re-integration of the offender into the community.
117. For long-term prisoners, the new section 12(4A) also ensures that the conditions of the Home Detention Curfew licence are aligned with those of the subsequent parole licence, by requiring the Scottish Ministers to have regard to the recommendations of the Parole Board.
118. Section 12AB (inserted by subsection (10) of section 15), sets out the arrangements for the curfew condition, which must be included in the Home Detention Curfew licence. The curfew condition requires the released person to remain at a specified place for specified periods. Subsection (2) provides that the curfew may specify different places or different periods for different days, and requires that the total period should be not less than 9 hours each day. Subsection (2) allows flexibility for the curfew to fit round e.g. employment or training or family commitments. The flexibility also allows the curfew condition to be used to support other conditions, e.g. attendance at training or rehabilitation projects. Special provision is made for the first and last days as they will normally only contain part of a curfew period. The flexibility also allows the curfew condition to be used to support other conditions, e.g. attendance at training or rehabilitation projects. Section 12AB also allows the curfew condition to include a requirement for the released person to stay away from a particular place, again for a specified time or period. This is based on similar provision made for Restriction of Liberty Orders, where the courts occasionally include a condition requiring an offender to keep away from a particular address.
119. The curfew condition will be remotely monitored using tagging devices, as is currently done for Restriction of Liberty Orders and similar movement restriction conditions in other forms of court order or release on licence. Subsections (3) to (7) of the new section 12AB provide for the management of the remote monitoring, and make similar provision to that made for Restriction of Liberty Orders in sections 245B and 245C of the Criminal Procedure (Scotland) Act 1995. Subsection (3) applies section 245C of the 1995 Act. That section permits Scottish Ministers to make arrangements, including contractual arrangements, for remote monitoring; requires offenders to wear or carry

devices to enable the remote monitoring; and provides for regulations to specify the devices which may be used.

120. Subsection (13) inserts a new section 17A into the 1993 Act. This section provides for the recall of prisoners that have been released under new section 3AA where they have failed to comply with any of the conditions in the Home Detention Curfew licence or can no longer be remotely monitored at the specified place. In such cases, the Scottish Ministers may revoke the Home Detention Curfew licence and recall the person to prison. The prisoner is then liable to be detained in pursuance of his sentence, but will be eligible for automatic release (if a short term prisoner) or consideration for parole (if a long term prisoner) under section 1 of the 1993 Act once he has served one-half of his sentence. In practice, long term prisoners released and recalled from Home Detention Curfew will be referred back to the Parole Board so they can consider whether their earlier recommendation for release at the half way stage is still appropriate, or whether the recall from Home Detention Curfew represents an adverse development which would justify cancelling that recommendation. Once the person is returned to prison, following recall from Home Detention Curfew, he must be informed of the reasons for the revocation of the licence and of his right to make representations to the Scottish Ministers. Where a person makes representations, the Scottish Ministers are required to refer the case to the Parole Board. The Parole Board may then direct that the revocation be upheld or cancelled. Section 20 of the 1993 Act will permit the Parole Board Rules to be adapted to provide for the appeal process.
121. Section 17A(6) provides that where a person's licence has been revoked and he is at large, he shall be deemed to be unlawfully at large. Section 40 of the Prisons (Scotland) Act 1989 provides that a person who is unlawfully at large may be detained by a constable without a warrant, and also provides that unless otherwise directed by Scottish Ministers, no account shall be taken for the purposes of sentence calculation, of the period during which the prisoner was unlawfully at large.
122. A further consequence of revocation and recall under this section resulting from failure to comply with the licence conditions is that the prisoner is no longer eligible for release on Home Detention Curfew – see section 3AA(5)(f). Where the prisoner can no longer be monitored at the specified address, and the licence is revoked because of this rather than a breach of the licence conditions, the prisoner remains eligible for Home Detention Curfew if a suitable address can be found.
123. Subsection (14) amends section 45 of the 1993 Act, which governs the making of rules and orders. The result is that any order made under section 12AA(3) (specification of standard conditions) will be subject to annulment in pursuance of a resolution of the Scottish Parliament, and any order under section 3AA(6) (adjusting time limits, proportions of sentence, exclusions etc.) will have to be laid in draft and approved by the Scottish Parliament before being made (i.e. draft affirmative procedure).